

HAWAI‘I RULES OF APPELLATE PROCEDURE

**Adopted and Promulgated by
the Supreme Court
of the State of Hawai‘i**

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**The Judiciary
State of Hawai‘i**

HAWAII RULES OF APPELLATE PROCEDURE

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Rule 1. SCOPE OF RULES AND TITLE.

(a) **Scope of rules.** These rules govern all proceedings in the Hawai'i appellate courts except as otherwise provided by statute or Rules of the Supreme Court.

(b) **Rules not to affect jurisdiction.** These rules shall not be considered to extend or limit the jurisdiction of the Hawai'i appellate courts as established by law.

(c) **Title.** These rules shall be known and cited as the Hawai'i Rules of Appellate Procedure and abbreviated as HRAP.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 2. SUSPENSION OF RULES.

In the interest of expediting a decision, or for other good cause shown, either Hawai'i appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

(Amended effective January 23, 1995; further amended December 6, 1999, effective January 1, 2000.)

Rule 2.1. APPLICABILITY OF OTHER COURT RULES; DEFINITIONS.

(a) **Applicability of other court rules.** The Hawai'i Rules of Civil Procedure, the Hawai'i Rules of Penal Procedure, the District Court Rules of Civil Procedure, the Rules of Circuit Courts, Hawai'i Family Court Rules, Rules of the Land Court, Rules of the Tax Appeal Court, Rules Governing Court Reporting, the Hawai'i Appellate Conference Program Rules, and other rules of court that may be adopted by the supreme court from time to time are hereby adopted as part of these rules whenever applicable.

(b) **Definitions.** As used in the HRAP:

"agency" means every board, commission, department, council, committee, entity or officer of the State of Hawai'i or its political subdivisions that is authorized by law to adjudicate contested cases or issue declaratory rulings or orders that may be appealed directly to the Hawai'i appellate courts;

"appeal" includes every proceeding in the Hawai'i appellate courts other than an original action;

"appellate clerk" includes any clerk, deputy, or assistant clerk of the Hawai'i appellate courts;

"assignment judge or justice" means the chief justice or the chief justice's designee as provided by Rule 31;

"civil appeal" means any appeal from a civil case;

"civil case" means any proceeding in the land or tax appeal court, any proceeding before a governmental agency, and any proceeding in the family, circuit or district court other than a criminal case;

"clerk of the court" includes the clerks of each state trial court and, in appropriate cases, the official designated by an agency to prepare the record for appeals;

"docketed" means the record from a court or agency is filed in the appellate courts;

"Hawai'i appellate court" or "Hawai'i appellate courts" mean the Hawai'i Supreme Court and the Hawai'i Intermediate Court of Appeals, collectively and individually, but does not include the land or tax appeal courts;

"intermediate court of appeals" means the Hawai'i Intermediate Court of Appeals;

"nominal appellee" means a party who is designated an appellee because it is the agency or court from which appeal is taken or because the party was a party in the court or agency proceeding, but asserts no interest in the outcome of the appeal;

"papers" include pleadings, exhibits, documents and appendices;

"party" means named plaintiff, defendant, petitioner, respondent, claimant, or intervenor in the court or agency proceeding and anyone who has standing to seek review of the court or agency order or judgment; it does not include witnesses;

"supreme court" means the Hawai'i Supreme Court.

(Added December 6, 1999, effective January 1, 2000.)

Rule 3. APPEALS - HOW TAKEN.

(a) **Filing the notice of appeal.** An appeal permitted by law from a court or agency to the Hawai'i appellate courts shall be taken by filing of a notice of appeal, together with such fees as are established by statute or these rules, with the clerk of the court within the time allowed by Rule 4. Within

seven days after the filing of the notice of appeal, the clerk of the court from which the appeal is taken shall transmit a copy of the notice of appeal to the clerk of the supreme court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

(b) Joint or consolidated appeals. If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal and thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of either of the Hawai'i appellate courts upon the court's own motion, upon motion of a party, or upon stipulation of the parties to the several appeals.

(c) Content of the notice of appeal.

(1) The notice of appeal shall identify the party or parties taking the appeal either in the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as "all plaintiffs," "the defendants," "plaintiffs A, B, et al.," or "all defendants except X." In a class action, whether or not the class has been certified, it is sufficient for the notice of appeal to name one person qualified to bring the appeal as representative of the class.

(2) The notice of appeal shall designate the judgment, order, or part thereof and the court or agency appealed from. A copy of the judgment or order shall be attached as an exhibit. Forms 1, 2, and 3 in the Appendix of Forms are suggested forms of notices of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(3) The notice of appeal shall have affixed to it proof that service of the notice was made on all parties to the appeal in the manner required by paragraph (e) of this rule. The clerk of the court shall permit a notice of appeal to be filed without the proof of service but the person who filed the notice of appeal shall file the proof of service within seven days after the filing of the notice of appeal.

(d) Denomination of the parties. The party appealing shall be denominated the appellant and by the appellant's denomination in the proceeding from

which the appeal is taken so that an appellant shall be denominated plaintiff-appellant or petitioner-appellant or defendant-appellant or respondent-appellant. All other parties shall be denominated appellees, and each appellee's denomination in the proceeding from which the appeal is taken shall also be include so that each appellee shall be denominated plaintiff-appellee or petitioner-appellee or defendant-appellee or respondent-appellee. Any appellee who supports the position of an appellant shall meet the time schedule for filing papers that is provided for that appellant.

(e) Service of the notice of appeal.

(1) The appellant shall serve, by mail or delivery, a file-marked copy of the notice of appeal on counsel of record for each other party, or, if a party is not represented by counsel, to the party at the party's last known address. Proof of service shall be filed with the court or agency promptly after the filing of the notice of appeal.

(2) Additionally, in all actions where the court appealed from is not required to enter findings of fact and conclusions of law prior to the entry of an order, judgment, or decree, but is required to do so once a notice of appeal is filed, the appellant shall serve, by mail or delivery, a file-marked copy of the notice of appeal on the judge who entered the order, judgment, or decree, together with a file-marked copy of the request for entry of the required findings of fact and conclusions of law, as set forth in Rule 10. The clerk of the court shall include the findings of fact and conclusions of law in the record transmitted to the appellate clerk.

(f) Payment of fees. If the fees are not paid, the clerk of the court shall notify the appellate clerk in writing forthwith.

(Amended December 6, 1999, effective January 1, 2000; further amended effective January 3, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 3.1. CIVIL APPEAL DOCKETING STATEMENT.

(a) Cases for which required. Any party who files a notice of appeal or cross appeal in a civil case shall file therewith a Civil Appeal Docketing Statement (CADS), except that a CADS shall not be filed in any appeal from or original proceeding involving (1) a petition for extraordinary relief such as a petition for a writ of mandamus or the like, (2) a petition for a writ of habeas corpus, (3) an appeal or petition in which the appellant or petitioner is incarcerated and is seeking relief related to the incarceration, (4) an appeal or case arising under Rule 40 of the Hawai'i Rules of Penal Procedure, (5) questions of law reserved to the Hawai'i Supreme Court, (6) revocation of a drivers' license, (7) a restraining order, (8) termination of parental rights, or (9) adjudication of a juvenile as a law violator.

The CADS form will be provided by the court and is attached to the Hawai'i Rules of Appellate Procedure as Form 6.

(b) Time for filing. The CADS shall be filed with the notice of appeal. The clerk of the court from which the appeal is taken shall not reject a notice of appeal for which there is no CADS.

(c) Number of copies. Any person filing a CADS shall submit an original and two copies.

(d) Transmission and service of the CADS. The clerk of the court shall transmit two copies of the CADS, along with the notice of appeal, to the appellate clerk. Any party who files a CADS shall serve it on all other parties.

(e) Relationship to Rules 10 and 11. Upon notice from the appellate clerk that an appeal has been accepted into the appellate conference program, preparation of transcripts, the record, and briefs shall be stayed pending further notification from the appellate clerk, notwithstanding anything to the contrary in Rules 10, 11, and 28 of these rules. If an appeal is accepted into the appellate conference program, the appellate clerk shall notify the parties, the clerk of the court from which appeal is taken, and the court reporters. Likewise, the appellate clerk shall notify the parties, the clerk of the court from which appeal is taken, and the court reporters if an appeal is returned to the appeals docket. The appellate clerk's notices shall be in writing and may be transmitted by interoffice mail, United States mail, or facsimile.

(f) Sanctions. Failure to file a CADS may result in sanctions, including dismissal of the appeal.

(Added March 1, 1995, effective March 15, 1995; further amended and effective April 25, 1995; further amended and effective February 26, 1996; further amended December 6, 1999, effective January 1, 2000; further amended November 17, 2000, effective January 1, 2001.)

Rule 4. APPEALS - WHEN TAKEN.**(a) Appeals in civil cases.**

(1) TIME AND PLACE OF FILING. When a civil appeal is permitted by law, the notice of appeal shall be filed within 30 days after entry of the judgment or appealable order.

The notice of appeal shall be filed with the clerk of the court from which the appeal is taken. If a notice of appeal is mistakenly filed in the supreme court, the appellate clerk shall note on it the date of receipt and shall transmit the notice to the clerk of the court appealed from. The date of receipt by the appellate clerk shall be deemed to be the date the notice of appeal was filed in the court or agency.

(2) PREMATURE FILING OF APPEAL. In any case in which a notice of appeal has been filed prematurely, such notice shall be considered as filed immediately after the time the judgment becomes final for the purpose of appeal.

(3) TIME TO APPEAL AFFECTED BY POST-JUDGMENT MOTIONS. If, not later than 10 days after entry of judgment, any party files a motion that seeks to reconsider, vacate, or alter the judgment, or seeks attorney's fees or costs, the time for filing the notice of appeal is extended until 30 days after entry of an order disposing of the motion; provided, that the failure to dispose of any motion by order entered upon the record within 90 days after the date the motion was filed shall constitute a denial of the motion.

The notice of appeal shall be deemed to appeal disposition of all post-judgment motions that are filed within 10 days after entry of judgment.

The 90-day period shall be computed as provided in Rule 26.

(4) EXTENSIONS OF TIME TO FILE THE NOTICE OF APPEAL.

(A) Requests for extensions of time before expiration of the prescribed time. The court or agency appealed from, upon a showing of good

cause, may extend the time for filing a notice of appeal upon motion filed within the time prescribed by subsections (a)(1) through (a)(3) of this rule. However, no such extension shall exceed 30 days past such prescribed time. An extension motion that is filed before the expiration of the prescribed time may be ex parte unless the court or agency otherwise requires.

(B) Requests for extensions of time after expiration of the prescribed time. The court or agency appeal from, upon a showing of excusable neglect, may extend the time for filing the notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by subsections (a)(1) through (a)(3) of this rule. However, no such extension shall exceed 30 days past the prescribed time. Notice of an extension motion filed after the expiration of the prescribed time shall be given to the other parties in accordance with the rules of the court or agency appealed from.

(5) ENTRY OF JUDGMENT OR ORDER DEFINED. A judgment or order is entered when it is filed in the office of the clerk of the court.

(b) Appeals in criminal cases.

(1) TIME AND PLACE OF FILING. In a criminal case, the notice of appeal shall be filed in the circuit, district, or family court within 30 days after the entry of the judgment or order appealed from.

(2) EFFECT OF POST-JUDGMENT MOTIONS. If a timely motion in arrest of judgment under Rule 34 of the Hawai'i Rules of Penal Procedure or for a new trial under Rule 33 of the Hawai'i Rules of Penal Procedure has been made, an appeal from a judgment of conviction may be taken within 30 days after the entry of any order denying the motion.

(3) ENTRY OF JUDGMENT OR ORDER DEFINED. A judgment or order is entered within the meaning of this subsection when it is filed with the clerk of the court.

(4) PREMATURE NOTICE OF APPEAL. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be deemed to have been filed on the date such judgment or order is entered.

(5) EXTENSIONS OF TIME TO FILE A NOTICE OF APPEAL. Upon showing of good cause, the circuit or district court may, no later than 30 days after the time has expired, on motion and notice, extend the time for filing a notice of appeal for a period not to exceed

30 days from the expiration of the time otherwise prescribed by this subdivision (b). Any such motion that is filed before expiration of the prescribed time may be ex parte unless the court otherwise requires.

(Amended July 18, 1984, retroactive to June 1, 1984; further amended October 22, 1985, effective October 22, 1985; further amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001.)

Rule 4.1. CROSS-APPEALS.

(a) Right of cross-appeal.

(1) If a timely notice of appeal is filed by a party, any other party may, if allowed by law, file a cross-appeal.

(2) In civil cases involving multiple-party plaintiffs or defendants, if one party files a timely notice of appeal, any other party, whether on the same or opposite side as the party first appealing, may file a cross-appeal against all or any of the other parties to the case as well as against the party who first appealed. If the cross-appeal operates against a party not affected by the first appeal or in a manner different from the first appeal, that party may file a further cross-appeal as if the cross-appeal affecting that party had been the first appeal.

(3) In criminal cases, the state or the defendant may file a cross-appeal within the time and under the circumstances permitted by this rule if the appeal is otherwise allowed by law.

(b) Manner and time of filing.

(1) The cross-appellant shall file with the clerk of the court appealed from a notice of cross-appeal and pay the filing fee within 14 days after the notice of appeal is served on the cross-appellant, or within the time prescribed for filing the notice of appeal, whichever is later.

(2) The notice of cross-appeal shall comport with, and be filed and served in the manner prescribed by, Rule 3.

(c) Additional requirements. The cross-appellant shall comply with all rules governing appeals, except that the cross-appellant is not required to order a transcript or file a court reporter's certificate unless the initial appeal is abandoned or dismissed without the record. Otherwise, the cross-appeal proceeds in the same manner as an ordinary appeal.

(d) Abandonment or dismissal of appeal. If the appellant abandons the initial appeal or the appellate court dismisses it, the cross-appeal may nevertheless be prosecuted to its conclusion, if allowed by law. Within 14 days after the entry of the order dismissing the initial appeal, if there is a record to be transcribed, the cross-appellant shall, in accordance with Rule 10(b), serve on each cross-appellee and file with the clerk of the court appealed from, a notice to prepare a reporter's transcript of such parts of the proceedings as the cross-appellant deems necessary that are not already on file.

(e) Extension of time to file cross-appeal. A party seeking an extension of time to take a cross-appeal shall proceed under Rule 4.

(Added December 6, 1999, effective January 1, 2000.)

Rule 5. RESERVED.

Rule 6. RESERVED.

Rule 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES.

The circuit, district, family, land, and/or tax appeal court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

Rule 8. STAYS, SUPERSEDEAS BONDS, OR INJUNCTIONS PENDING APPEAL.

(a) Motions for stay, supersedeas bond or injunction in the appellate courts. A motion for stay of the judgment or order in a civil appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal shall ordinarily be made in the first instance to the court or agency appealed from.

A motion for such relief on an appeal may be made to the appellate court before which the appeal is pending or to a judge thereof, but, if the appeal is from a court, the motion shall show that application to the court appealed from for the relief sought is not

practicable, or that the court appealed from has denied an application, or has failed to afford the relief the applicant requested, with the reasons given by the court appealed from for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits, declarations, or other sworn statements or copies thereof. With the motion shall be filed such copies of parts of the record as are relevant. Notice of the motion shall be given to all parties. The motion shall be filed with the appellate clerk and should ordinarily be considered by the appellate court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge or justice of the court. If the motion for such relief is from an agency, the motion shall comply with statutory requirements, if any.

(b) Stay may be conditioned upon giving of bond; proceedings against sureties. Relief available in the appellate courts under this rule may be conditioned upon the filing of a bond or other appropriate security in the court or agency appealed from. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, the bond, stipulation, or undertaking shall comply with applicable statutes, and each surety submits to the jurisdiction of the court or agency appealed from and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting liability on the bond or undertaking may be served. Liability may be enforced on motion in the court or agency appealed from without the necessity of an independent action. The motion and such notice of the motion as the court or agency prescribes may be served on the clerk of the court appealed from, who shall forthwith mail copies to the sureties if their addresses are known.

(c) Stays in criminal cases. Stays in criminal cases shall be had according to law.

(Amended April 13, 1985, effective April 23, 1985; further amended December 6, 1999, effective January 1, 2000.)

**Rule 9. RELEASE IN CRIMINAL CASES
PENDING APPEAL.****(a) Appeals or relief from orders respecting release prior to a judgment of conviction.**

(1) An appeal authorized by law from an order refusing or imposing conditions of release prior to a judgment of conviction shall be determined promptly. Upon the entry of an order refusing or imposing conditions of release, the circuit, district, or family court shall state in writing the reasons for the action taken. As soon as practicable after the filing of the notice of appeal, the appellant shall file a copy of the court's order with the appellate court. The appeal shall be heard without the briefs, unless otherwise ordered by the appellate court upon such papers, affidavits or declarations, transcripts, and copies of portions of the record as the parties may present or the appellate court may require. Any papers filed in accordance with this rule shall be served on all other parties. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the appellant pending the appeal.

(2) Review of orders respecting release prior to a judgment of conviction may be obtained by application for an extraordinary writ pursuant to Rule 21. An application for a writ of habeas corpus shall conform to statute. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the applicant pending the disposition of the application for the extraordinary writ.

(b) Release pending appeal from a judgment of conviction. Application for release after a judgment of conviction shall be made in the first instance in the circuit, district, or family court. If the court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending a review may be made to the appellate court before which the appeal is pending or to a judge or justice thereof. The application shall be made by filing a written motion with proof of service on all other parties. It shall be determined promptly upon such papers, affidavits or declarations, transcripts, and copies of portions of the record as the parties shall present or the appellate court may require. Any papers filed in accordance with this rule shall be

served on all other parties. The appellate court that has jurisdiction over the case or a judge or justice thereof may order the release of the appellant pending disposition of the motion.

(c) Criteria for release. The decision as to release shall be made according to statute.

(Amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 10. THE RECORD ON APPEAL.

(a) Composition of the record on appeal. The record on appeal shall consist of the following:

(1) the original papers filed in the court or agency appealed from;

(2) written jury instructions given, or requested and refused or modified over objection;

(3) exhibits admitted into evidence or refused;

(4) the transcripts prepared for the record on appeal;

(5) in a criminal case where the sentence is being appealed, a sealed copy of the presentence investigation report; and

(6) the indexes prepared by the clerk of the court appealed from.

(b) The transcript of proceedings.

(1) REQUEST TO PREPARE TRANSCRIPT.

(A) When an appellant desires to raise any point on appeal that requires consideration of the oral proceedings before the court or agency appealed from, the appellant shall file with the clerk of the court appealed from, within 10 days after filing the notice of appeal, a request or requests to prepare a reporter's transcript of such parts of the proceedings as the appellant deems necessary that are not already on file.

(B) Each request shall contain the following information:

(i) Name of the judge who or agency that heard the proceedings;

(ii) Name of the reporter who will be required to prepare a transcript pursuant to the request, or if the proceedings were recorded by audio or video recording equipment, the name of the supervising court reporter, or if there is no supervising court reporter, the name of the administrator for the court or agency from which the appeal is being taken;

(iii) Date or dates of the trial or hearing to be transcribed; and

(iv) Portions of the transcript requested.

Unless the appellant is statutorily exempt from the transcript prepayment or deposit requirement, each request shall be accompanied by either a certificate by the reporter being required to prepare a transcript that the fees for the reporter's services have been paid or waived; a deposit of the approximate cost of the transcript fees, as computed by the reporter in advance in writing at the rate established by the Rules Governing Court Reporting in the State of Hawai'i; or a deposit of the approximate cost of the transcript fees, as computed in advance in writing, at the rate of \$150 for each hour of proceedings to be transcribed. If a request is accompanied by a deposit, the deposit shall be further accompanied by directions to the clerk of the court to use it to pay for the reporter's fees when the transcript is complete.

(C) Unless the appellant is exempt from the transcript payment or deposit requirement or the reporter has waived such requirement, a reporter need not commence preparation of the transcript until the required deposit or transcript prepayment has been made. If the appellant files a request for transcript without prepaying the transcript fees, making the required deposit, or obtaining the reporter's waiver of prepayment or deposit, the reporter shall, within eleven (11) days from the date of the filing of the request for transcripts, notify the supreme court in writing that prepayment, deposit, or waiver of prepayment or deposit for the transcripts was not made. A copy of the notice shall also be served on counsel for the party requesting the transcript.

(D) The appellant shall, within five (5) days of filing a request for transcripts, either deliver or mail a file-marked copy of the request and its accompanying documents to the reporter who is being required to prepare a transcript, or deposit a file-marked copy of the request and its accompanying documents in the reporter's court jacket. The appellant shall also deliver or mail a file-marked copy of the request and its accompanying documents to counsel for all other parties, or the parties themselves, if pro se.

(E) Upon receipt of a request for a transcript, the reporter shall time stamp or otherwise acknowledge the date of receipt on the request, indicate the expected completion date on the request, and then

transmit a copy of the request to the clerk of the appellate court and counsel for all parties or the parties themselves, if pro se. If the transcript cannot be completed within 45 days after the filing of the notice of appeal, the reporter shall notify counsel for all parties, or the parties themselves, if pro se, of the new date on which the transcript is expected to be completed, provided that the transcript shall be completed within 60 days after the filing of the notice of appeal, unless the reporter obtains an additional extension of time from the supreme court. Any such additional extension shall be granted upon demonstration by the court reporter that good cause for the extension exists. The court reporter shall serve a copy of the extension order upon counsel for all parties or the parties themselves, if pro se. In the event of the failure of the reporter to file the transcript within the time allowed, the supreme court may take appropriate action, including the levying of a sanction against the court reporter. Upon completion of the transcript, the reporter shall file it with the clerk of the court from which the appeal is taken.

(F) If, upon receiving a request for a transcript, the reporter determines that the prepaid fees or the amounts deposited by the appellant are inadequate to cover the cost of the transcript, the reporter shall, within 10 days after receiving the request, file with the clerk of the court and mail or deliver to the appellant an estimate or revised estimate of the total cost of the transcript and a notice of the additional amount required to be paid or deposited. The appellant shall pay the reporter and shall file a reporter's certificate of payment or deposit within 10 days after the mailing of the reporter's notice. The reporter shall continue to work on the transcript until the prepaid fees or initial deposit are earned or until the expiration of the time allowed to make the additional payment or deposit.

(G) When a transcript is completed, payment of which is to be made by the clerk of the court from the appellant's deposit, the reporter shall bill the appellant at the rate authorized by the Rules Governing Court Reporting in the State of Hawai'i, with a copy to the clerk of the court, and the clerk of the court shall pay the reporter from the funds deposited and promptly refund any excess deposit to the appellant or give notice to the appellant of any additional funds needed.

(2) CERTIFICATE THAT NO TRANSCRIPTS TO BE PREPARED. If the appellant deems it unnecessary to have transcripts prepared, the appellant shall, within 10 days after filing the notice of appeal, file a certificate to that effect with the clerk of the court appealed from and serve a copy of the certificate on each appellee.

(3) DUTY OF APPELLANT IN INSUFFICIENCY OF THE EVIDENCE APPEALS. If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(4) NOTICE TO APPELLEE IF PARTIAL TRANSCRIPT IS ORDERED. Unless the entire transcript is to be prepared, the appellant shall, within the 10-day time provided in (b)(1)(A) of this Rule 10, file a statement of the points of error the appellant intends to present on the appeal and shall serve on the appellee a copy of the statement. If, within 10 days after service of the statement, the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall file and serve on the appellant a designation of additional parts to be prepared and included in the record on appeal. Unless within 10 days after service of such designation the appellant has ordered such parts and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the court or agency appealed from for an order requiring the appellant to do so.

(c) Statement of the evidence of proceedings when no report made or when transcript unavailable. If the reporter refuses, becomes unable, or fails to transcribe all or any portion of the evidence or oral proceedings after proper request, the party may (i) request that transcription of the reporter's notes be submitted to another reporter for transcription where feasible; or (ii) prepare a statement of the evidence or proceedings from the best available means, including the party's recollection or uncertified transcripts or reporter's notes. The statement shall be served on the opposing party(ies), who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the court or agency appealed from for settlement and approval

and as settled and approved shall be included by the clerk of the court appealed from in the record on appeal.

(d) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subsection (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the court or agency appealed from and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. The statement, together with such additions, deletions, and modifications as the court or agency may consider necessary to truthfully and fully present the issues raised by the appeal, shall be approved by the court or agency appealed from and shall then be certified as the record on appeal and transmitted by the clerk of the court appealed from within the time provided by Rule 11. It shall contain a copy of the judgment and the notice of appeal with its filing date. The statement shall be accompanied by a list of such exhibits admitted in evidence or rejected as the parties desire to have transmitted on appeal.

(e) Correction or modification of the record.

(1) If any differences arise as to whether the record truly discloses what occurred in the court or agency appealed from, the differences shall be submitted to and settled by that court or agency and the record made to conform to the truth.

(2) If anything material to any party is omitted from the record by error or accident or is misstated therein, corrections or modifications may be as follows:

(A) by the stipulation of the parties; or

(B) by the court or agency appealed from, either before or after the record is transmitted; or

(C) by direction of the appellate court before which the case is pending, on proper suggestion or its own initiative.

(3) All other questions as to the form and contents of the record shall be presented to the appellate court before which the case is pending.

(f) Request for findings of fact and conclusions of law. In all actions where the court appealed from is not required to enter findings of fact and conclusions of law prior to the entry of an order, judgment, or decree, but is required to do so once a notice of appeal is filed, the appellant shall, no later than 10 days after filing the notice of appeal, file in the court appealed from a request for entry of findings of fact and conclusions of law, naming the judge who tried the action and entered the order, judgment, or decree being appealed. The named judge shall enter the requested findings of fact and conclusions of law within 28 days after the request has been filed. To aid the court, the court may order the parties or either of them to submit proposed findings of fact and conclusions of law after the filing of the request.

(Amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended October 6, 2003, effective January 1, 2004.)

Rule 11. TRANSMISSION OF THE RECORD.

(a) Duty of appellant. After the filing of the notice of appeal, the appellant, or in the event more than one appeal is taken, each appellant, shall comply with the applicable provisions of Rule 10(b) and shall take any other action necessary to enable the clerk of the court to assemble and transmit the record.

(b) Duty of the Clerk of the Court.

(1) Unless otherwise provided, the clerk of the court shall, within 60 days from the filing of the notice of appeal, assemble, certify, and transmit to the appellate clerk a single record on appeal. If a complete record cannot be transmitted within such a period, the supreme court, for good cause, may extend the time upon stipulation or motion, provided that timely-ordered transcripts completed after the record has been transmitted to the appellate clerk, and timely-requested findings of fact and conclusions of law entered after the record on appeal has been transmitted to the appellate clerk, shall be transmitted by the clerk of the court as a supplemental record without further order of the supreme court.

(2) If the notice of appeal is filed without payment of the required fees and the appellant has not obtained an order allowing the appellant to

proceed in forma pauperis, the clerk of the court shall not be required to prepare the record on appeal until the required fees are received or an order allowing the party to proceed in forma pauperis is obtained.

(3) In preparing the record on appeal, the clerk of the court shall consecutively number the pages of the court or agency file and shall provide in the file a numbered index of all the pages therein. If any original papers, exhibits, and transcripts filed in the court or agency appealed from are not mentioned in the numbered index, the clerk of the court shall provide an additional index identifying each of them with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record shall not be transmitted by the clerk of the court unless he or she is directed to do so by a party or by the appellate clerk. A party must make advance arrangements with the respective clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Duty of the Appellate Clerk.

(1) Upon the filing of the record on appeal, the appellate clerk shall provide all parties to the appeal with copies of the record index. If an index is claimed to be in error, the party claiming it to be so is obligated to pursue appropriate proceedings in the court from which the appeal is taken to correct it.

(2) When the record on appeal is not filed within the time required, the appellate clerk shall give notice to counsel for appellant, or to the appellant, if the appellant is pro se, that the matter will be called to the attention of the appellate court on a day certain for such action as the appellate court deems proper, including dismissal of the appeal.

(d) Temporary retention of record in the court or agency appealed from for use in preparing appellate papers. Notwithstanding the provisions of (a) and (b) of Rule 11, the parties may stipulate, or the court from which the appeal is taken on motion of any party may order, that the clerk of the court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event, the clerk of the court shall certify to the appellate clerk that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may

agree or the appellate court may order, the appellant shall, in writing, request the clerk of the court to transmit the record.

(e) Retention of the record in the court or agency appealed from by order of the appellate court. The supreme court may order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the court or agency appealed from for its use pending appeal, the court or agency may make an order to that effect, and the clerk of the court shall retain the record or parts thereof subject to the request of the supreme court and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the court or agency shall allow and copies of such parts as the parties may designate.

(f) Stipulation of parties that parts of the record be retained in the court or agency appealed from. The parties may agree by written stipulation filed in the court or agency appealed from that designated parts of the record shall be retained by the court or agency unless thereafter the appellate court before which the case is pending, or any party, shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) Record for preliminary hearing in the appellate courts. If any party desires to make a motion for any intermediate order in the appellate courts, before the record is transmitted, the clerk of the court from which the appeal is taken shall transmit to the appellate clerk such parts of the original record as any party shall request and designate in writing.

This rule applies to all motions for intermediate orders including motions for dismissal, for release, for a stay pending appeal, for injunctive relief, or for additional security on the bond on appeal or a supersedeas bond.

(Amended December 18, 1985, effective December 18, 1985; further amended January 22, 1987, effective February 1, 1987; further amended January 26, 1987, effective January 26, 1987; further amended June 7, 1994, effective June 7, 1994; further amended December 6, 1999, effective

January 1, 2000; further amended May 7, 2001, effective July 1, 2001; further amended October 6, 2003, effective January 1, 2004.)

Rule 12. RECEIPT OF THE NOTICE OF APPEAL BY THE APPELLATE COURTS; FILING OF RECORD.

(a) Receipt of the notice of appeal by the appellate courts. Upon receipt of the notice of appeal, the appellate clerk shall thereupon assign an appellate court number to the case. Except as provided below, an appeal shall be listed with the appellate courts under the title given to the action in the court or agency appealed from with the appellant identified as such, but if such title does not contain the name of the appellant, his or her name, identified as the appellant, shall be added to the title. In juvenile and paternity proceedings and whenever otherwise required by law, the anonymity of the persons or parties involved shall be maintained by the use of fictitious names and designations.

(b) Filing the record, partial record, or certificate. Upon receipt of the record or the partial record, or the clerk of the court's certificate, or the certified copy of the docket entries, the appellate clerk shall file it and shall immediately give notice to all parties of the date on which it was filed. The appeal is docketed with the Hawai'i appellate courts on the date of filing of the record, partial record, clerk of the court's certificate or certified copy of the docket entries.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 12.1. STATEMENT OF JURISDICTION.

(a) Filing. Within 10 days after the record on appeal is filed each appellant and cross-appellant shall file a statement of jurisdiction. Any appellee contesting jurisdiction may file a statement contesting jurisdiction within the same period.

(b) Length. The statement shall not exceed 10 pages in length exclusive of title page(s), indexes, and the certificate of service.

(c) Content. The statement of jurisdiction shall show the specific statutory or other grounds upon which the jurisdiction of the Hawai'i appellate courts is invoked. The statement shall include, with references to the record on appeal, (i) relevant procedural facts establishing jurisdiction and (ii) relevant filing dates establishing the timeliness of the appeal.

(1) **CIVIL.** In a civil case involving multiple claims or multiple parties, the statement shall specifically set out, with dates and references to the record on appeal, (i) how each claim against each party was resolved or (ii) whether the appealed order or judgment was certified for appeal.

(2) **CRIMINAL.** In a criminal case, the statement shall identify the offense(s) involved in the appeal by statutory section and name, any sentence imposed, and the defendant's custody status in the case on appeal.

(d) Attachment. A copy of the order or judgment shall be attached to the statement.

(Added November 10, 1993, effective December 15, 1993; amended December 6, 1999, effective January 1, 2000.)

Rule 13. CERTIFICATION OF QUESTION OF HAWAII LAW BY FEDERAL COURTS.

(a) When certified. When a federal district or appellate court certifies to the Hawai'i Supreme Court that there is involved in any proceeding before it a question concerning the law of Hawai'i that is determinative of the cause and that there is no clear controlling precedent in the Hawai'i judicial decisions, the Hawai'i Supreme Court may answer the certified question by written opinion.

(b) Contents of certificate. The certificate provided for herein shall contain the title of the Hawai'i Supreme Court and the title of the cause in full, and to the right thereof the words "Certified

Question" and the name of the court submitting or approving the submission of the question. The certificate shall also contain a statement of prior proceedings in the case, a statement of facts showing the nature of the cause, the question of law to be answered, and the circumstances out of which the question arises.

(c) Preparation of certificate. The certificate may be prepared by stipulation or as directed by such federal court. When prepared and signed by the presiding judge of such federal court, it shall be certified to the Hawai'i Supreme Court by the clerk of the federal court and under its official seal. The Hawai'i Supreme Court may, in its discretion, require original or copies of all or any portion of the record before the federal court to be filed with the certificate.

(d) Briefs. Briefs conforming to the Hawai'i Rules of Appellate Procedure shall be filed by the parties as ordered by the court.

(e) Deleted.

(Amended June 9, 1986, effective June 9, 1986; further amended December 6, 1999, effective January 1, 2000.)

Rule 14. RESERVED.**Rule 15. RESERVED QUESTIONS.**

(a) From what court. A circuit court, district court, family court, the land court, the tax appeal court and any other court empowered by statute, may reserve for the consideration of the Hawai'i appellate courts a question of law arising in any proceedings before it. Questions may be reserved on motion of any party or on the court's own motion.

(b) Record. The court reserving the question shall transmit as much of the record as may be necessary to a full understanding of the questions reserved to the appellate clerk. Certified copies may be transmitted in lieu of the original papers.

(c) Disposition. The court to which the assignment judge assigns the question may make such disposition of the case as it deems proper. It may, in its discretion, return any reserved question for decision in the first instance by the court reserving it.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 16. PLEADINGS IN ORIGINAL ACTIONS FILED IN THE SUPREME COURT.

All pleadings in applications for writs or other relief, filed originally in the supreme court, shall conform to the requirements of Hawai'i Rules of Civil Procedure 7 through 15.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 17. ORIGINAL PROCEEDINGS.

Original actions, including applications for writs or other relief, shall conform to the requirements of any applicable statutes and to such orders as may be entered by the appellate court to which the case is assigned.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 18. AGREED FACTS; SUBMISSION ON.

(a) Submission. As authorized by law, the parties to a dispute that might be the subject of a civil action or proceeding in a Hawai'i appellate court, circuit court, district court, family court, land court or tax appeal court may, without the action of a trial court or agency, agree to submit a case directly to a Hawai'i appellate court upon a statement containing the facts upon which the controversy depends, a statement of the question or issues, the contentions of the parties as to each issue, and the form of judgment that each party requests the appellate court to render.

(b) Good faith. It must be shown by affidavit or declaration that the controversy is real and that the proceedings are a good faith effort to determine the rights of the parties.

(c) Disposition. The appellate court may refuse to entertain a case submitted on agreed facts. If the appellate court entertains the case, the judgment rendered thereon shall be entered and may be enforced as in other cases, subject to the right of a party to move for reconsideration.

(Added December 6, 1999, effective January 1, 2000.)

Rule 19. RESERVED.**Rule 20. RESERVED.****Rule 21. WRITS OF MANDAMUS OR PROHIBITION DIRECTED TO A JUDGE; WRITS OF MANDAMUS DIRECTED TO A PUBLIC OFFICER; OTHER EXTRAORDINARY WRITS.**

(a) Writs of mandamus or prohibition directed to a judge. Application for a writ directed to a judge shall be made by filing a petition with the clerk of the supreme court with proof of service on the respondent judge, all parties to the action in the trial court, and the attorney general. The petition shall contain: (i) a statement of facts necessary to an understanding of the issues presented; (ii) a statement of issues presented and of the relief sought; and (iii) a statement of reasons for issuing the writ.

Copies of any order or opinions or parts of the record that may be essential to an understanding of the matters set forth in the petition shall be attached to the petition.

Upon receipt of the prescribed filing fee, the appellate clerk shall docket the petition and submit it to the supreme court for determination as to whether the writ will be entertained. A petition may be assigned to the intermediate court of appeals.

(b) Writs of mandamus directed to a public officer. An application for a writ of mandamus directed to a public officer shall be made by filing a petition with the clerk of the supreme court with proof of service on the officer and the attorney general or the chief legal officer of the county, as applicable. The petition shall conform to the requirements of subsection (a) of this rule. Upon receipt of the prescribed filing fee, the appellate clerk shall docket the petition and submit it to the supreme court for a determination as to whether it will be entertained. If the court elects to entertain the petition, it will be handled in the same manner as a petition under subsection (a) of this rule.

(c) Denial; order directing answer. If the court to which the petition is assigned is of the opinion that the writ should not be entertained, it shall deny the petition. Otherwise, it shall order that an answer to the petition be filed by the respondents within the time fixed by the order. The order shall be served by the appellate clerk on the respondents and the attorney general or the chief legal officer of the applicable county and, in the case of a writ directed to a judge, on all other parties to the action in the

trial court. All parties other than the petitioners shall be deemed respondents for all purposes. Two or more respondents may answer jointly. If the judge named respondent does not desire to appear in a proceeding, the judge may advise the appellate clerk and all parties by letter, but the petition shall not thereby be taken as admitted. The appellate clerk shall advise the parties, the attorney general, or the chief legal officer of the applicable county of the dates on which any required briefs are to be filed and of the date of any oral argument. The proceeding shall be given preference over ordinary civil cases.

(d) Habeas corpus proceedings. Habeas corpus proceedings before the Hawai'i Supreme Court shall be governed by and conform to statute.

(e) Other extraordinary writs. Application for other extraordinary writs may be made by petition filed with the appellate clerk in conformity with subsection (a) of this rule. Proceedings on such application shall conform, so far as is practicable, to the procedures prescribed in subsections (a), (b) and (c) of this rule.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 22. RESERVED.

Rule 23. CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS.

(a) Transfer of custody. Pending disposition of any habeas corpus proceeding commenced pursuant to statute, before the Hawai'i appellate courts or a judge or justice thereof for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing any need therefor, the appellate court or a judge or justice thereof may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) Detention or release of prisoner pending disposition of application for habeas corpus. Pending a disposition of an application for habeas corpus pursuant to statute, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be released upon the prisoner's own recognizance, with or without surety, as may appear fitting to the appellate

court or the judge or justice to which or to whom the application is made.

(c) Modification of initial order respecting custody. Unless modified by the appellate court or the judge or justice to which or to whom the application is made, the initial order respecting the custody or release of the prisoner and any recognizance or surety taken shall govern pending disposition of the application.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 24. PROCEEDINGS IN FORMA PAUPERIS.

(a) Leave to proceed on appeal in forma pauperis from the circuit, district, family, land or tax appeal court or from an agency determination to the Hawai'i appellate courts. A party to an action in the circuit, district, family, land or tax appeal court, or before an administrative agency who desires to proceed on appeal in forma pauperis shall file in the court or agency a motion for leave to so proceed, together with an affidavit or declaration, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay the required filing fees or to give security for costs, the party's belief that he or she is entitled to redress, and a statement of the issues that the party intends to present on appeal. A party who has filed such a motion may file his or her notice of appeal without being required to prepay the filing fees. If the motion is granted, the party may proceed without further application to the appellate courts and without prepayment of fees or costs in any court or agency or the giving of security therefor. If the motion is denied, the court or agency appealed from shall state in writing the reasons for the denial. The court or agency appealed from shall promptly provide the appellate clerk with a filed copy of its order granting or denying the motion.

(b) Effect of prior leave to proceed in forma pauperis. Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in a court or agency in forma pauperis, or who has been permitted to proceed as one who is financially unable to obtain adequate defense in a criminal case, may proceed on appeal in the same action in forma pauperis without further authorization unless, before or after the notice of

appeal is filed, the court or agency shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the court or agency shall state in writing the reasons for such certification or finding.

(c) Motion for leave to proceed in forma pauperis before the supreme court. If a motion for leave to proceed on appeal in forma pauperis is denied by the court or agency, or if the court or agency certifies that the appeal is not taken in good faith or finds that the party is otherwise not entitled to proceed in forma pauperis, the clerk of the court shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the supreme court within 10 days after service of the notice of the action of the court or agency. The motion shall be accompanied by a copy of the affidavit or declaration filed in the court or agency, or by the affidavit or declaration prescribed in the first paragraph of this subsection if no affidavit or declaration has been filed in the court or agency, and by a copy of the statement of reasons given by the court or agency for its action.

(d) Effect of denial of motion for leave to proceed in forma pauperis. If the court or agency has denied a party the authority to proceed on appeal in forma pauperis, then within 10 days after the denial of such a motion filed in the supreme court or, if no such motion is filed in the supreme court, within 10 days after the expiration of the time to file such a motion in the supreme court, the movant shall pay all unpaid filing fees and shall give security for costs. Failure of the unsuccessful movant to pay the unpaid filing fees or to give security for costs shall not affect the validity of the appeal, but is ground for such action as the appellate court having jurisdiction over the appeal deems appropriate, which may include dismissal of the appeal.

(Amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 25. FILING AND SERVICE.

(a) Filing. Papers shall be filed with the appellate clerk or with an ex officio clerk, as provided by statute. Filing may be accomplished by mail addressed to the appellate clerk, but filing shall not be considered timely unless the papers are received by the clerk within the time fixed for filing,

except that briefs and appendices shall be deemed filed on the day of mailing if mailed by First Class Mail or other class of mail that is at least as expeditious, postage prepaid. If a motion requests relief that may be granted by a single judge or justice, the judge or justice may permit the motion to be filed and shall note thereon the date of filing and shall thereafter transmit it to the appellate clerk.

(b) Service of all papers required. Copies of all papers filed by any party shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the proceedings. Service on a party represented by counsel shall be made on counsel.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a responsible person at the office of counsel. Service by mail is complete on mailing, if mailed in the manner provided in subsection (a) above.

(d) Proof of service. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date, the manner of service, and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. Where computation of the time for a response to the document served begins with the filing date of that document, a file-marked copy of the document shall also be served upon all other parties promptly after filing.

(e) Acknowledgment of service. The party served may file, within 5 days after receiving service, an acknowledgment of service setting forth the date and manner of service where the date of receipt differs from the date contained in the proof of service attached to the papers filed.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 26. COMPUTATION AND EXTENSION OF TIME.

(a) **Computation of time.** In computing any period of time prescribed by these rules, an order of court, or any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, any intervening Saturday, Sunday, or legal holiday shall be excluded in the computation.

(b) **Extension of time.** The Hawai'i appellate courts, or any judge or justice thereof, for good cause shown upon motion may extend the time prescribed by these rules for doing any act, or may permit an act to be done after the expiration of such time. Provided however, no court or judge or justice is authorized to change the jurisdictional requirements contained in Rule 4 of these rules.

(c) **Additional time after service by mail.** Whenever a party is required or permitted to do an act within a prescribed time after service of a paper, and the paper is served by mail, 2 extra days shall be added to the prescribed period.

(d) **Shortening time.** A judge or justice for good cause shown may shorten the time for serving or filing a notice of motion or other paper incident to an appeal or an original proceeding in the reviewing court. A motion to shorten time shall be made as provided in Rule 27.

(e) **Relief from default.** The reviewing court for good cause shown may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 27. MOTIONS.

(a) **Content of motions; response.** Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a written motion with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion,

shall state with particularity the grounds upon which it is based, and shall set forth the order or relief sought. If a motion is supported by a memorandum, affidavit, declaration, or other papers, they shall be served and filed with the motion. Any party may file a written response in opposition to a motion within 5 days after service of the motion, but the appellate court may extend or shorten the time for responding to any motion as provided in Rule 26(b) and (d).

(b) **Determination of motions for procedural orders.** Notwithstanding Rule 27(a), motions for procedural orders, including motions for extension of time, may be acted upon at any time, without awaiting a response. Pursuant to rule or order of the appellate court, motions for specified types of procedural orders may be disposed of by the appellate clerk. Any party adversely affected by such action, by application to the appellate court, may request reconsideration, vacation, or modification of such action.

(c) **Power of a single judge or justice to entertain motions.** In addition to authority conferred by rule or law, a single judge or justice may decide any motion before the court on which the judge or justice sits, except that: (i) a single judge or justice may not dismiss or otherwise determine an appeal or other proceeding; and (ii) the Hawai'i Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by it or the intermediate court of appeals. Any party adversely affected by the action of a single judge or justice may, by application to the court on which the judge or justice sits, request reconsideration, vacation, or modification of such action.

(d) **Page limits.** A motion, other than a motion for reconsideration pursuant to Rule 40, shall not exceed three pages, including an abbreviated caption and signature. Memoranda in support or opposition shall not exceed twenty pages including abbreviated captions and signatures. Only affidavits or declarations and papers necessary for the determination of the motion may be attached.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 28. BRIEFS.

(a) **Format, service, and page limitation.** All briefs shall conform with Rule 32 and be accompanied by proof of service of two copies on

each party to the appeal. Except after leave granted, an opening or answering brief shall not exceed 35 pages, and a reply brief shall not exceed 10 pages, exclusive of indexes, appendices, and statements of related cases. If a brief raises ineffective assistance of counsel as a point of error, the appellant shall serve a copy of the brief on the attorney alleged to have been ineffective.

(b) Opening brief. Within 40 days after the filing of the record on appeal, the appellant shall file an opening brief, containing the following sections in the order here indicated:

(1) A subject index of the matter in the brief with page references and a table of authorities listing the cases, alphabetically arranged, text books, articles, statutes, treatises, regulations, and rules cited, with references to the pages in the brief where they are cited. Citation to Hawai'i cases since statehood shall include both the state and regional reporters. Citation to foreign cases may be to only the regional reporters. Where cases are generally available only from electronic databases, citation may be made thereto, provided that the citation contains enough information to identify the database, the court, and the date of the opinion.

(2) (Reserved)

(3) A concise statement of the case, setting forth the nature of the case, the course and disposition of proceedings in the court or agency appealed from, and the facts material to consideration of the questions and points presented, with record references supporting each statement of fact or mention of court or agency proceedings. In presenting those material facts, all supporting and contradictory evidence shall be presented in summary fashion, with appropriate record references. Record references shall include page citations and the volume number, if applicable. References to transcripts shall include the date of the transcript, the specific page or pages referred to, and the volume number, if applicable. Lengthy quotations from the record may be reproduced in the appendix. There shall be appended to the brief a copy of the judgment, decree, findings of fact and conclusions of law, order, opinion or decision relevant to any point on appeal, unless otherwise ordered by the court.

(4) A concise statement of the points of error set forth in separately numbered paragraphs. Each point shall state: (i) the alleged error committed by the

court or agency; (ii) where in the record the alleged error occurred; and (iii) where in the record the alleged error was objected to or the manner in which the alleged error was brought to the attention of the court or agency. Where applicable, each point shall also include the following:

(A) when the point involves the admission or rejection of evidence, a quotation of the grounds urged for the objection and the full substance of the evidence admitted or rejected;

(B) when the point involves a jury instruction, a quotation of the instruction, given, refused, or modified, together with the objection urged at the trial;

(C) when the point involves a finding or conclusion of the court or agency, a quotation of the finding or conclusion urged as error;

(D) when the point involves a ruling upon the report of a master, a quotation of the objection to the report.

Points not presented in accordance with this section will be disregarded, except that the appellate court, at its option, may notice a plain error not presented. Lengthy parts of the transcripts that are material to the points presented may be included in the appendix instead of being quoted in the point.

(5) A brief, separate section, entitled "Standard of Review," setting forth the standard or standards to be applied in reviewing the respective judgments, decrees, orders or decisions of the court or agency alleged to be erroneous and identifying the point of error to which it applies.

(6) (Reserved)

(7) The argument, containing the contentions of the appellant on the points presented and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on. The argument may be preceded by a concise summary. Points not argued may be deemed waived.

(8) Relevant parts of the constitutional provisions, statutes, ordinances, treaties, regulations, or rules pertaining to the points of error set out verbatim, unless otherwise provided in the brief. If lengthy, they may be cited and their pertinent text set out in the appendix.

(9) A conclusion, specifying with particularity the relief sought.

(10) An appendix. Anything that is not part of the record shall not be appended to the brief, except as provided in this rule.

(11) Statement of Related Cases. A brief statement identifying any related case known to be pending in the Hawai'i courts or agencies. The statement shall include the following: case caption, docket number, and the nature of the relationship. Cases are deemed related if they:

(A) arise out of the same or consolidated cases in the court or agency;

(B) involve a case that was previously heard by the Hawai'i appellate courts;

(C) involve the same parties;

(D) involve the same or closely related issues;

(E) involve the same basic transaction or event; or

(F) have any other similarities of which the appellate courts should be aware.

The statement shall be presented on a separate page, entitled "Statement of Related Cases." The statement shall be the last page in the brief following the appendices, if any. If no other cases are deemed related, a single statement to this effect shall be provided. If appellant identifies a case as related, no other party need duplicate the listing in that party's brief. If appellant learns of a related case after filing the initial brief, appellant shall promptly file a statement.

(c) Answering brief. Within 40 days after service of appellant's opening brief, or receipt as evidenced by an acknowledgment of service as provided in Rule 25, whichever is later, the appellee shall file an answering brief. The brief shall be of like character as that required for an opening brief except that no statement of points shall be required, and no other section is required unless the section presented in the opening brief is controverted. If, after filing the answering brief, appellee learns of a related case that has not been previously identified by any other party, appellee shall promptly file a statement of related cases that conforms with subsection (b)(11) of this rule.

A nominal appellee need not file an answering brief. The appellate court may require an answering brief if one is deemed useful to its consideration.

(d) Reply brief. Within 14 days after service of appellee's answering brief, or receipt as evidenced by an acknowledgment of service as provided in

Rule 25(e), whichever is later, the appellant may file a reply brief. The reply brief shall be confined to matters presented in the answering brief. If no reply brief is to be filed, the appellant shall notify the appellate clerk and the appellee in writing of that decision prior to the expiration of the time for filing the reply brief.

(e) Briefs on reserved questions. In cases in which a single question has been reserved, the party maintaining the affirmative shall, for the purpose of this rule, be regarded as the appellant and the party opposing the question as the appellee. So also where there are several questions and one party has the affirmative as to all of them. Where several questions have been reserved as to which a party maintains the affirmative as to some and the negative as to others, the plaintiff shall be regarded as the appellant and the defendant as the appellee, unless, upon application to the appellate court, an order specifying otherwise is issued by the appellate court. Unless otherwise ordered by the appellate court, briefs by the parties shall conform to Rule 28(a), (b), (c) and (d) except that points of error and standards of review need not be provided.

(f) Briefs in original cases. Unless otherwise ordered by the appellate court, Rule 28(a), (b), (c) and (d) shall apply to cases brought originally in the Hawai'i Supreme Court, except that points of error and standards of review need not be provided. For purposes of this rule, when a case is brought originally in the supreme court, the party who would be regarded as the plaintiff or petitioner, if the matter were instituted in a trial court, shall be regarded as the appellant, and the opposing party as the appellee.

(g) Brief of amicus curiae. An amicus curiae brief may be filed only by leave of the appellate court. The order granting leave shall fix the time for filing the amicus curiae brief and any response thereto. The appellate court may allow or disallow the filing of such brief with or without a hearing. All amicus curiae briefs shall comply with the applicable provisions of subsection (b) of this rule. The attorney general may file an amicus curiae brief without order of the court in all cases where the constitutionality of any statute of the State of Hawai'i is drawn into question, provided that the attorney general shall file the brief within 30 days after the filing of the answering brief, or within 30 days after notice was received pursuant to Rule 44, whichever period last

expires.

(h) Briefs on cross appeal. If there is a cross appeal, separate opening and answering briefs on the cross appeal, and any reply brief relating thereto, shall be filed in addition to the briefs on the primary appeal and shall comply with the applicable requirements of Rule 28(a), (b), (c) and (d).

(i) Reserved.

(j) Citation of supplemental authorities. Parties may, by letter to the appellate clerk bring to the appellate court's attention pertinent and significant authorities published after a party's brief has been filed, but before a decision. A copy of the letter, setting forth the citations, shall be served at or before the time of filing as provided by Rule 25(b) of these rules. The letter shall provide references to either the page(s) of the brief or to a point argued orally to which the citations pertain. The letter shall, without argument, state the reasons for the supplemental citations. The parties shall provide the court with seven copies unless the case is assigned to the intermediate court of appeals in which case five copies shall be provided. Any response shall be made promptly and shall be similarly limited.

(Amended February 20, 1985, effective February 20, 1985; further amended January 22, 1987, effective January 22, 1987; further amended November 10, 1993, effective December 15, 1993; further amended April 5, 1994, effective April 15, 1994; further amended June 23, 1994, effective June 23, 1994; further amended effective October 19, 1994, further amended August 14, 1995, effective October 16, 1995; further amended September 7, 1995, effective October 30, 1995; further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 29. EXTENSIONS OF TIME FOR BRIEFS.

(a) By the appellate clerk. Upon timely (1) oral request, or (2) written motion, or (3) letter request by a party, the appellate clerk shall grant one extension of time for no more than 30 days for the filing of an opening or answering brief and no more than 10 days for the filing of a reply brief. The appellate clerk shall note on the record that the extension was granted and the date the brief is due. The requesting party shall notify all other parties that the extension

was granted and shall file a copy of the notice in the record. A request is timely only if it is received by the appellate clerk within the original time for filing of the brief.

(b) By the appellate court. Motions for further extensions of time to file briefs will be approved by a judge or justice only upon good cause shown.

The submission of a request or motion for extension does not toll the time for filing a brief.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 30. BRIEFS NOT TIMELY FILED OR NOT IN CONFORMITY WITH RULE.

When the brief for appellant is not filed within the time required, the appellate clerk shall forthwith give notice to counsel for the parties that the matter will be called to the attention of the appellate court on a day certain for such action as the appellate court deems proper and that the appeal may be dismissed. When the brief of an appellant is otherwise not in conformity with these rules, the appeal may be dismissed or the brief stricken and monetary or other sanctions may be levied by the appellate court. When the brief of an appellee is not filed within the time required, or is not in conformity with these rules, the brief may be stricken and monetary or other sanctions may be levied by the appellate court. In addition, the appellate court may accept as true the statement of facts in the appellant's opening brief. Any party who may be adversely affected by application of this rule may submit a memorandum, affidavits, or declarations setting forth the reasons for non-conformance with these rules.

(Amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001.)

Rule 31. ASSIGNMENT OF CASES AND MATTERS ADDRESSED TO THE JURISDICTION OF THE HAWAII APPELLATE COURTS; REASSIGNMENT PROCEDURES.

(a) **Initial assignment of cases.** The chief justice, or the chief justice's designee to be appointed by the chief justice from among the regularly appointed justices of the supreme court or from among the regularly appointed judges of the intermediate court of appeals, shall receive each case or matter. The appellate clerk shall forward the complete file of the case or matter to the assignment judge or justice no later than the close of business on the fifth working day following the filing deadline for the last document permitted to be filed in the case pursuant to court rule.

The assignment judge or justice shall file an order with the appellate clerk assigning the case or matter either to the intermediate court of appeals or to the supreme court no later than the 20th working day following the filing deadline of the last document permitted to be filed; provided, however, that, if a related case or matter on appeal and briefing of such case or matter has not been completed, the assignment judge or justice may delay assignment of the case or matter until the related case is assigned.

The appellate clerk shall serve the order of assignment on all parties.

In addition to the statutory criteria, the assignment judge or justice may consider the relative workloads of the supreme court and the intermediate court of appeals when assigning cases.

(b) Reassignment of case or matter to Supreme Court.

(1) **TIME OF DETERMINATION; CRITERIA FOR REASSIGNMENT.** After the assignment judge or justice has ordered a case or matter assigned to the intermediate court of appeals, the majority of the justices of the supreme court may, by order of the court, cause the case or matter to be reassigned to the supreme court.

(2) **HOW REASSIGNMENT RAISED BEFORE THE SUPREME COURT.** The supreme court may order reassignment to itself:

- (A) upon its own motion;
- (B) upon a certification in writing, filed with the appellate clerk by any two judges of the intermediate

court of appeals that in their judgment the case or matter concerns an issue of fundamental public importance such that the case or matter should be reassigned to the supreme court; or

(C) upon the written petition of any party to the case or matter.

(3) **CONTENTS OF PETITION.** A petition for reassignment shall contain, in the following order:

(A) A request for reassignment to the supreme court.

(B) A statement of prior proceedings in the case.

(C) A short statement of relevant facts.

(D) A statement of the issues of law raised by the case or matter.

(E) A statement as to how the case or matter concerns an issue of fundamental public importance such that reassignment to the supreme court is appropriate.

(F) A brief argument, not to exceed 10 pages, with supporting authorities.

(4) **ORAL ARGUMENT.** There shall be no oral argument on a petition for reassignment unless ordered by the supreme court.

(5) **DETERMINATION.** The supreme court shall accept or reject a certification of reassignment from the intermediate court of appeals, or shall grant or deny a petition for reassignment, no later than the 15th day after the filing of the certification or petition. The failure of the supreme court to accept a certification or grant a petition within the required time shall constitute a rejection or denial of the certification or petition. If the certification is accepted, or the petition is granted, the case or matter shall be deemed assigned to the supreme court as of the date of acceptance or grant.

(6) **DISCRETION OF THE SUPREME COURT.** The determination of reassignment to the supreme court is a matter within the discretion of the supreme court.

(7) **NO MOTION FOR RECONSIDERATION AFTER DETERMINATION OF REASSIGNMENT.** Neither acceptance or rejection of a certificate of reassignment nor the grant or denial of a petition for reassignment shall be subject to a motion for reconsideration by the supreme court.

(c) through (e). Deleted.

(Amended January 22, 1987, effective January 22, 1987; amended April 4, 1988, effective May 1, 1988; further amended effective May 19, 1997; further amended December 6, 1999, effective January 1, 2000.)

Rule 32. FORM OF PAPERS.

(a) Quality and size of papers. All papers and briefs filed in the appellate courts shall be printed, photocopied, typewritten or otherwise prepared in print in a clear and legible manner on unruled, unglazed, opaque white paper. The pages shall be 8-1/2 inches by 11 inches. Each sheet shall have a margin at the top and bottom of not less than 1 inch and on the left-hand side of not less than 1 inch. Such papers shall be filed without covers and without creasing the same and, except for opinions, orders, certificates, and other items filed by the court, shall include a flyleaf upon which shall be noted in the order named, beginning at the top, the case number, the title of the appellate court and the cause abbreviated or in full, the character of the document, and the name or names, addresses and the telephone numbers of the attorney or attorneys representing the party on whose behalf the same is filed and the names of all judges who have participated in the case or matter. Immediately below the title of the document, a space shall be left for the file mark of the appellate clerk. No originals of such papers, except printed briefs, shall be perforated or permanently bound. Copies, except printed briefs, shall be bound or stapled at the upper left-hand corner. Copies, but not originals, may be two-sided.

(b) Quality and style of print. If typed, the print must be standard 12 point pica or equivalent and yield no more than 14 characters to the inch. If printed, whether in proportional or non-proportional fonts, the print must yield no more than 14 characters to the inch. Footnotes and quotations shall be typed or printed in the same font and size as the text. Twelve point Times New Roman, Courier New, or Arial fonts will be deemed to satisfy the requirements of this rule. No attempt shall be made to reduce or condense the print in a manner that would increase the content of the document. All print, including all copies, shall be clear and legible and the lines double spaced or one and one-half spaced except in headings, quotations, citations, indexes, footnotes, and appendices.

(c) Signature. All original documents filed with the appellate court must be signed in black ink by the party or, if the party is represented, by the party's attorney. The name of the signator shall be typed or printed under the signature.

(Amended April 5, 1994, effective April 15, 1994; further amended September 13, 1995, effective September 13, 1995, further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 32.1. NUMBER OF COPIES REQUIRED TO BE FILED.

The original of all documents shall be filed with the appellate clerk and copies shall be submitted as follows:

(a) Opening, answering, and reply briefs. Two copies are required when filing. After briefing is completed, the appellate clerk will notify the parties of any additional copies required.

(b) Other documents. For a listing of the number of copies required for specific documents, see Appendix A. All other documents require six copies if filed in the supreme court and four copies if filed in the intermediate court of appeals.

(c) Where directed by the appellate clerk. In all cases, the appellate clerk may direct that a specific number of additional copies be furnished on or before a specified date.

(Added December 6, 1999, effective January 1, 2000.)

Rule 33. APPEAL CONFERENCES.

The appellate court before which the case is pending may direct the attorneys or the parties, if pro se, to appear before the court or a judge or justice thereof for a conference to consider the simplification of the issues and such other matters as may aid in the disposition of the case by the appellate court. The appellate court or judge or justice shall enter an order that recites the action taken at the conference and the agreements made by the parties as to the matters considered and that limits the issue to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the subsequent course of the proceedings, unless modified to prevent manifest injustice.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 34. ORAL ARGUMENT.

(a) In general. Oral argument shall be had in all cases except those in which the appellate court before which the case is pending enters an order providing for consideration of the case without oral argument.

(b) Notice of argument; postponement; request for additional time to argue. The appellate clerk shall advise all parties whether oral argument is to be heard and, if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for the allowance of additional time to argue must be made by motion filed within 10 days of such notification. The request for additional time shall state the reasons the case cannot be presented within the time allotted.

(c) Motion for retention of oral argument. If the appellate court has ordered a case submitted on the briefs, any party may, within 10 days after the mailing of the order, file a motion for retention of oral argument, supported by a statement of reasons. The appellate court may grant or deny such motion, and such grant or denial shall not be subject to review or reconsideration.

(d) Order and content of argument. The appellant is entitled to open and conclude the argument. The opening argument may include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records, or authorities.

(e) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal

at a single argument, unless the appellate court otherwise directs. If a case involves a cross-appeal, the plaintiff in the trial court or agency action shall be deemed to be the appellant for the purpose of this rule unless the parties otherwise agree or the appellate court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(f) Non-appearance of parties. If the appellee or counsel fails to appear to present argument, the appellate court may hear argument on behalf of the appellant. If the appellant or counsel fails to appear, the appellate court may hear argument from the appellee. If neither party nor counsel appears, the case will be decided on the briefs unless the court shall otherwise order. Sanctions may be assessed against attorneys of record or pro se parties who fail to appear.

(g) Submission on briefs. By agreement of the parties, a case may be submitted for decision on the briefs. In any such case, the appellate court may require oral argument.

(h) No oral argument by party failing to file brief. If the appellant or the appellee has failed to file an opening or answering brief, as the case may be, oral argument by that party's counsel, or the party, if pro se, will not be heard unless the appellate court directs otherwise.

(i) Use of visual aids at argument; removal. If visual aids are to be used at the argument, counsel or the party, if pro se, shall arrange with the appellate clerk to have them placed in the courtroom before the appellate court convenes on the date of the argument. After the argument, counsel or the party, if pro se, shall cause the visual aids to be removed from the courtroom unless the appellate court otherwise directs. If the visual aids are not reclaimed by counsel or the pro se party within a reasonable time, they shall be destroyed or otherwise disposed of by the appellate clerk.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 35 DISPOSITIONS.

(a) Class of disposition. Dispositions may be rendered by a designated judge or justice and may take the form of published, per curiam, or memorandum opinions or dispositional orders.

(b) Publication. Memorandum opinions shall not be published. Dispositional orders shall not be published except upon the order of the appellate court.

(c) Citation. A memorandum opinion or unpublished dispositional order shall not be cited in any other action or proceeding except when the opinion or unpublished dispositional order establishes the law of the pending case, res judicata or collateral estoppel, or in a criminal action or proceeding involving the same respondent.

(d) Mailing by appellate clerk. The appellate clerk shall promptly mail or telefax all parties a copy of the opinion or dispositional order.

(e) Terminology. When used in an opinion or dispositional order, the word "reverse" ends litigation on the merits, and the phrase "vacate and remand" indicates the litigation continues in the court or agency in accordance with the appellate court's instruction.

(As amended and effective March 11, 1996; further amended December 6, 1999, effective January 1, 2000.)

Rule 36. ENTRY OF JUDGMENT; OBLIGATION TO PREPARE NOTICE AND JUDGMENT ON APPEAL.

(a) Entry of judgment. The filing of the notice and judgment on appeal constitutes entry of judgment on appeal.

(b) Prevailing party's obligation to prepare and serve notice and judgment on appeal. In all cases, the prevailing party or, in the case of a dispute as to who is the prevailing party, the party designated by the appellate clerk, shall, within 10 days after a final decision has been filed in the case, prepare and submit a proposed notice and judgment on appeal. Form 5 in the Appendix of Forms is suggested for the notice and judgment on appeal. The proposed notice and judgment on appeal shall have affixed to it proof that a copy was served on all parties. Upon presentation to the appellate clerk, the appellate clerk shall submit the proposed notice and judgment on appeal to a judge or justice for approval and signature. The appellate clerk shall thereafter sign and enter the notice and judgment on appeal. The party who prepared the proposed notice and judgment on appeal shall, by mail or personal

delivery, serve a file-marked copy of the notice and judgment on appeal on each party. Service on a party represented by counsel shall be made on counsel.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 37. INTEREST ON JUDGMENTS.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the circuit or district court. If the judgment is modified or vacated with a direction that a judgment for money be entered in the circuit or district court, the notice and judgment on appeal shall contain instructions with respect to allowance of interest.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 38. DAMAGES AND COSTS FOR FRIVOLOUS APPEALS.

If a Hawai'i appellate court determines that an appeal decided by it was frivolous, it may, after a separately filed motion or notice from the appellate court and reasonable opportunity to respond, award damages, including reasonable attorneys' fees and costs, to the appellee.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 39. COSTS AND ATTORNEY'S FEES.

(a) Civil costs; to whom allowed. Except in criminal cases or as otherwise provided by law, if an appeal or petition is dismissed, costs shall be taxed against the appellant or petitioner upon proper application unless otherwise agreed by the parties or ordered by the appellate court; if a judgment is affirmed or a petition denied, costs shall be taxed against the appellant or petitioner unless otherwise ordered; if a judgment is reversed or a petition granted, costs shall be taxed against the appellee or the respondent unless otherwise ordered; if a judgment is affirmed in part and reversed in part, or is vacated, or a petition granted in part and denied in part, the costs shall be allowed only as ordered by the appellate court. If the side against whom costs are assessed has multiple parties, the appellate court may apportion the assessment or impose it jointly and severally.

(b) Costs for and against the State of Hawai'i.

In cases involving the State of Hawai'i or an agency or officer thereof, if an award of costs against the State is authorized by law, costs shall be awarded in accordance with the provisions of this rule; otherwise costs shall not be awarded for or against the State of Hawai'i, its agencies, or its officers acting in their official capacities.

(c) Costs defined. Costs in the appellate courts are defined as: (1) the cost of the original and one copy of the reporter's transcripts if necessary for the determination of the appeal; (2) the premiums paid for supersedeas bonds or other bonds to preserve rights pending appeal; (3) the fee for filing the appeal; (4) the cost of printing or otherwise producing necessary copies of briefs and appendices, provided that copying costs shall not exceed 20¢ per page; and (5) any other costs authorized by statute or rule.

(d) Request for fees and costs; objections.

(1) A party who desires an award of attorney's fees or costs shall request them by submitting an itemized and verified bill of fees or costs, together with a statement of authority for each category of items. Requests for indigent fees and costs shall be submitted in a form that substantially complies with Form 7 in the Appendix of Forms. Requests for non-indigent attorney's fees and costs allowed by statute or contract shall be submitted in a form that substantially complies with Form 8 in the Appendix of Forms.

(2) A request for fees and costs must be filed with the appellate clerk, with proof of service, no later than 14 days after entry of judgment. An untimely request for fees and costs may be denied. Attorneys appointed to represent indigent persons may submit a request for attorney's fees and costs, as provided by statute, after the case has been assigned to either the supreme court or the intermediate court of appeals. Requests for fees and costs by counsel appointed to represent indigent persons may be held in abeyance until resolution of the case on the merits. If oral argument is had or additional work is performed thereafter, the attorney may submit a request for additional fees and costs.

(3) Objections to requests for fees and costs must be filed with the appellate clerk, with proof of service, within 10 days after service on the party against whom the fees and costs are to be taxed

unless the time is extended by the appellate court. A reply to the objections must be filed with the appellate clerk, with proof of service, within 7 days after service of the objections on the initiating party.

(Amended February 28, 1994, effective February 28, 1994; further amended September 11, 1996, effective October 15, 1996; further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 40. MOTION FOR RECONSIDERATION.

(a) Time. A motion for reconsideration may be filed by a party only within 10 days after the filing of the opinion, dispositional order, or ruling unless by special leave additional time is granted during such period by a judge or justice of the appellate court involved.

(b) Contents. The motion shall state with particularity the points of law or fact that the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. The motion shall be supported by a declaration of counsel to the effect that it is presented in good faith and not for purposes of delay.

(c) Response; reply argument. No response to a motion for reconsideration or reply to a response will be received unless requested by the appellate court. There shall be no oral argument on a motion for reconsideration unless ordered by the appellate court.

(d) Disposition of motion. The appellate court within 10 days of the filing of a motion for reconsideration, shall either grant or deny such motion. The failure of the appellate court to act within the 10 days shall constitute a rejection. If a motion for reconsideration is granted, the appellate court may, with or without new argument, modify the decision or take such action as may be appropriate.

(e) Only one motion permitted. Only one motion for reconsideration may be filed by any party, unless the court modifies the substance of its opinion, dispositional order, or ruling.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 40.1. APPLICATION FOR WRIT OF CERTIORARI IN THE SUPREME COURT.

(a) Application; when filed. No later than 30 days after the filing of an opinion, dispositional order, or ruling of the intermediate court of appeals or the filing of an order denying a timely motion for reconsideration by the intermediate court of appeals, any party may apply in writing to the supreme court for a writ of certiorari to review such opinion, dispositional order, or ruling.

(b) Discretion of the supreme court. Review by the supreme court of an opinion, dispositional order, or ruling of the intermediate court of appeals is a matter within the discretion of the supreme court.

(c) Denomination of the parties. The party applying for the writ of certiorari shall be denominated the petitioner; the petitioner's denomination in the appeal and in the trial court or agency shall also be included. All other parties shall be denominated respondents and each respondent's denomination in the appeal and in the trial court or agency shall also be included. Any respondent who supports the position of a petitioner shall meet the time scheduled for filing responsive papers.

(d) Contents. The application for a writ of certiorari shall not exceed 12 pages and shall contain in the following order:

(1) A short and concise statement of the question or questions presented for decision, set forth in the most general terms possible. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Questions not presented according to this paragraph will be disregarded. The supreme court, at its option, may notice a plain error not presented.

(2) A statement of prior proceedings in the case.

(3) A short statement of the case containing the facts material to the consideration of the questions presented.

(4) A brief argument with supporting authorities.

A copy of the opinion, dispositional order, or ruling of the intermediate court of appeals shall be attached as an appendix.

(e) Response; form. Within 5 days after the filing of an application for a writ of certiorari, any other party to the case may, but need not, file and serve a brief written response containing a statement of reasons why the application should not be granted.

(f) Oral argument. There shall be no oral argument on an application for a writ of certiorari unless requested by the supreme court.

(g) Determination. The supreme court shall act upon an application for a writ of certiorari no later than 10 days after the filing of the application. The failure of the supreme court to issue such writ within the 10 days shall constitute a rejection of the application.

(h) No reconsideration of acceptance or rejection of application for a writ of certiorari. Neither acceptance nor rejection of an application for a writ of certiorari shall be subject to a motion for reconsideration in the supreme court. The rejection of an application for certiorari shall be final. However, if an application for certiorari is accepted, the supreme court, at any time prior to final disposition, may sua sponte find certiorari was improvidently granted and may dismiss the certiorari proceeding.

(i) Review by supreme court after acceptance of application for a writ for certiorari. If the supreme court accepts the application for a writ of certiorari to review a decision of the intermediate court of appeals, the case shall be decided on the record and the briefs previously filed. The supreme court may limit the question on review, may request supplemental briefs, and may set the case for oral argument. Within 10 days after the acceptance of the application for a writ of certiorari, a party may move in the supreme court for permission to file a supplemental brief. The court may impose restrictions as to length and filing of such brief and any response thereto.

(Added December 6, 1999, effective January 1, 2000.)

Rule 41. STAY OF JUDGMENT.

The timely filing of a motion for reconsideration shall stay the finality of the decision until the disposition of the motion unless otherwise ordered by the appellate court. The timely filing of an application for a writ of certiorari shall stay the finality of the decision unless otherwise ordered by the supreme court. If the application for a writ is rejected, the opinion, dispositional order shall be final as of the date of rejection.

(Amended October 19, 1993, effective November 15, 1993; further amended December 6, 1999, effective January 1, 2000.)

Rule 42. DISMISSAL.**(a) Dismissal before the appeal is docketed.**

If an appeal has not been docketed, the appeal shall be dismissed by the court or agency from which appeal is taken upon the filing in that court or agency of a stipulation for dismissal signed by all the parties. Upon motion and notice by the appellant, the court or agency from which appeal is taken may dismiss the appeal upon terms fixed by the court or agency. Counsel for the appellant, or the appellant, if pro se, shall, within 72 hours after the entry of an order dismissing an appeal made by the court or agency appealed from, file a certified copy of the order with the clerk of the supreme court.

(b) Dismissal in the appellate courts. If the parties to a docketed appeal or other proceeding sign and file a stipulation for dismissal, specifying the terms as to payment of costs, and pay whatever fees are due, the case shall be dismissed upon approval by the appellate court, but no mandate or other process shall issue without an order of the court. Upon motion and notice, the appellate court may dismiss the appeal upon terms fixed by the appellate court.

(c) Special requirements for criminal appeals. In a criminal appeal by a defendant, the stipulation or motion for dismissal of the appeal shall be supported by the defendant's affidavit or declaration that reflects a knowing and intelligent understanding of the consequences of the dismissal of the appeal and that the withdrawal is made voluntarily. In circumstances where the defendant cannot be located after a diligent effort, the circumstances of the effort shall be set forth in an affidavit or declaration of counsel in support of the stipulation or motion.

(Amended January 22, 1987, effective February 1, 1987; further amended December 6, 1999, effective January 1, 2000; further amended October 6, 2003, effective January 1, 2004.)

Rule 43. SUBSTITUTION OF PARTIES.

(a) Death of a party. If a party dies after the notice of appeal is filed, or while the proceeding is otherwise pending in a Hawai'i appellate court, that court may substitute the personal representative of the deceased party as a party on motion filed by the representative or by any party with the appellate clerk. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record, and proceedings shall then be had as that court shall direct. If a party against whom an appeal may be taken dies after entry of the judgment or order in the court or agency appealed from but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall be effected in the Hawai'i appellate courts in accordance with this subsection. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by the party's personal representative, or, if the party has no representative, by the party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the Hawai'i appellate courts in accordance with this subsection.

(b) Substitution for other causes. If substitution of a party in the Hawai'i appellate courts is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (a).

(c) Public officers; death or separation from office.

(1) When a public officer is a party to an appeal or other proceeding in the Hawai'i appellate courts in his or her official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his or her successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time,

but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his or her official capacity he or she may be described as a party by his or her official title rather than by name, but the appellate court may require his or her name be added.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 44. CONSTITUTIONALITY OF STATUTE.

It shall be the duty of a party who draws in question the constitutionality of any statute of the State of Hawai'i in any proceeding in any Hawai'i appellate court to which the State of Hawai'i, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the appellate court, to give immediate notice in writing to the Attorney General of the State of Hawai'i of the existence of said question.

Rule 45. DUTIES OF APPELLATE CLERKS.

(a) General provisions. Neither the supreme court clerk nor any deputy or assistant clerk shall practice as an attorney or counselor in any court while he or she continues in office. The office of the clerk of the Supreme Court of Hawai'i shall be deemed always open for the purpose of filing any proper paper, issuing and returning process, and making motions and orders. The office of the clerk with the appellate clerk in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the supreme court may provide by rule that the office of the clerk shall be open for specified hours on Saturdays, Sundays, or legal holidays.

(b) The docket; calendar; other records required. The appellate clerk shall maintain a docket, in such form and style as may be prescribed by the Administrative Director of the Courts and shall enter therein each case. Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the docket. All papers filed with the appellate clerk and all process, orders, and judgments shall be entered chronologically in the docket. Entries shall be brief but shall show the

nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The appellate clerk shall keep a suitable index of cases contained in the docket.

The appellate clerk, upon receipt of the initial paper in any appeal or original proceeding, shall assign to it a number and shall forthwith give notice thereof to the parties. The appellate clerk shall docket the record in each case when filed in the appellate court and forthwith give notice thereof to the parties. Cross-appeals shall be docketed under the same number as the original appeal.

The appellate clerk shall prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, preference shall be given to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

The appellate clerk shall keep such other books and records as may be required from time to time by the Administrative Director of the Courts or as may be required by the appellate court.

(c) Notice of non-final orders. Immediately upon the entry of a non-final order, the appellate clerk shall serve notice of entry and shall make a notice in the docket of the service.

(d) Custody of records and papers. The appellate clerk shall have custody of the records and papers of the appellate courts. The appellate clerk shall not permit any original record or paper to be taken from his or her custody except as authorized by orders or instructions of a Hawai'i appellate court or any judge or justice thereof. Original papers transmitted as the record on appeal or review shall, upon disposition of the case, be returned to the court or agency from which they were received. The appellate clerk shall preserve copies of the briefs and appendices and other papers filed by the parties.

(e) Costs and fees to be collected by the appellate clerk. The appellate clerk shall collect costs and fees provided by Chapter 607 of the Hawai'i Revised Statutes except that the appellate clerk shall collect the amounts specified herein as follows:

1. For copies of any document in any public record:

a. maintained by the clerk and stored in the appellate clerk's office:

\$1.00 for the first page

\$0.50 for each additional page

b. in off-site storage:

Usual copying charge plus \$5.00

c. on microfilm:

i. by the appellate clerk: \$1.00 per page plus \$5.00

ii. self-service: \$1.00 per page

d. to be telefaxed:

Usual copying charge plus:

i. within Hawai'i: \$2.00 first page, \$1.00 each additional page

ii. outside Hawai'i, within the United States: \$5.00 first page, \$2.00 each additional page

iii. outside the United States: \$10.00 first page, \$5.00 each additional page

iv. rush requests (copy provided within 4 hours if request received before noon):

\$10.00 plus all other applicable charges

e. audio tapes, computer diskette (per hearing or document, in the appellate court's format, if available and appellate court or clerical staff can make the copy): \$10.00

2. Parties to a pending case shall not be charged for a paper copy of the appellate court's order, opinion, judgment or any other item entered in the case by the appellate court.

3. The appellate clerk shall charge the actual cost of mailing copies of any item, provided that parties to a pending case shall not be charged for the mailing of a paper copy of an order, opinion, or other item entered in the case by the appellate court.

4. Certification of qualification. \$5.00

5. Supreme Court filing fee: \$100.00

6. Ex officio filing (in addition to the usual filing fee): \$10.00

7. The appellate court, or any judge or justice thereof, may waive costs and fees for good cause shown. In lieu of copying and mailing fees, the Chief

Justice may authorize the appellate clerk to provide copies of orders, opinions, or other items to publishing companies in exchange for published materials for the benefit of the appellate court or the judiciary.

(Amended November 23, 1994, effective December 15, 1994; further amended December 6, 1999, effective January 1, 2000.)

Rule 46. RESERVED.

Rule 47. RESERVED.

Rule 48. RESERVED.

Rule 49. THE COURT.

(a) Terms of court. The Hawai'i appellate courts shall be deemed to be in continuous session.

(b) Signing of orders. Any justice or substitute justice of the supreme court and any judge or substitute judge of the intermediate court of appeals, may sign any order of the appellate court on which the judge or justice sits relating to any case or proceeding pending before such court.

(c) Acting chief justice. In case of a vacancy in the office of the chief justice, or if the chief justice is ill, absent, or otherwise unable to serve, the senior of the associate justices available shall serve temporarily in the chief justice's stead. Seniority for such purpose shall be determined by the length of the current service on the supreme court. The order of seniority among associate justices with equal current service on the court shall correspond to the order in which they were admitted to practice before the supreme court. The associate justices may, upon unanimous agreement, designate from time to time or for a particular case, any one of their number to act as chief justice when the chief justice is for any reason unable to serve. Such designation shall be in writing and filed with the appellate clerk.

(d) Acting chief judge. In case of a vacancy in the office of the chief judge, or if the chief judge is ill, absent, or otherwise unable to serve, the senior of the associate judges available shall serve temporarily in the chief judge's stead. Seniority for such purpose shall be determined by the length of the current service on the court. The order of seniority among associate judges with equal current service on the intermediate appellate court shall correspond to the

order in which they were admitted to practice before the supreme court. The associate judges may, upon unanimous agreement, designate from time to time or for a particular case, any one of their number to act as chief judge when the chief judge is for any reason unable to serve. Such designation shall be in writing and filed with the appellate clerk.

(f) through (h). Deleted.

(Amended March 25, 1986, effective March 25, 1986; further amended December 6, 1999, effective January 1, 2000.)

Rule 50. WITHDRAWAL, DISCHARGE, OR SUBSTITUTION OF APPELLATE COUNSEL.

(a) Withdrawal. An attorney desiring to withdraw as counsel of record must file a motion requesting leave therefor. The motion must show that prior notice of the motion was given by service upon the attorney's client. The appellate court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for filing of a motion to withdraw.

(b) Withdrawal with substitution. A substitution of counsel may be made by filing a notice of withdrawal and substitution. The notice must provide withdrawing counsel's name and substituting counsel's name, address, and telephone number. A notice of withdrawal and substitution of counsel must be signed by the client consenting thereto.

(c) Discharge. A client desiring to discharge the client's counsel of record must file a motion requesting leave therefor. The motion must show service upon the attorney. The appellate court may, in its discretion, grant or deny such motion or, where appropriate, remand the case for the filing of a motion to withdraw.

(Amended December 6, 1999, effective January 1, 2000.)

Rule 51. SANCTIONS.

Any attorney of record or party in a case, who fails to comply with any of the provisions of these rules or any order of the court shall be subject to monetary or other sanctions by the appellate court before which such case is pending, such sanctions to be levied by order of the appellate court or by order of any judge or justice thereof.

(Added December 18, 1985, effective December 18, 1985; amended December 6, 1999, effective January 1, 2000; further amended May 7, 2001, effective July 1, 2001.)

Rule 52. DECLARATION IN LIEU OF AFFIDAVIT.

In lieu of an affidavit, an unsworn declaration may be made by a person, in writing, subscribed as true under penalty of law, and dated, in substantially the following form:

I, (name of person), declare under penalty of law that the foregoing is true and correct.

DATED: _____.

Signature

(Added September 13, 1995, effective September 13, 1995.)

Rule 53. RESERVED.

Rule 54. LIFTING OR TERMINATION OF STAY OF PROCEEDINGS BY FEDERAL BANKRUPTCY COURT.

(a) Notice of appeal; record on appeal. Whenever a federal bankruptcy court lifts or terminates a stay of proceedings that has been entered with respect to a civil case in which an appeal is permitted by law and no notice of appeal has been filed, the provisions of Rule 4 shall apply as if the date of lifting or termination of the stay was the date of entry of the judgment appealed from; if a notice of appeal has been filed but the record not yet docketed, provisions of Rules 10, 11, and 12 shall apply as if the date of lifting or termination of the stay was the date of filing the notice of appeal; if the record has been filed and briefing has not been completed, the provisions of Rules 28, 29 and 30 shall apply as if the date of lifting or termination of the stay was the date of the filing of the last appropriate document.

(b) Notice. On the lifting or termination by the bankruptcy court of a stay of proceedings pending in the Hawai'i appellate courts, each party shall file a

written notification thereof with the appellate court within 7 days.

(c) Appellate court action during pendency.

The appellate court shall not consider motions or requests for relief during the pendency of the bankruptcy. Parties claiming that a bankruptcy stay is not in effect shall file a certified copy of the bankruptcy court's order vacating or modifying the stay or granting permission for the case to proceed.

(Added December 6, 1999, effective January 1, 2000.)

Appendix of Forms

Form 1. Notice of Appeal to the Supreme Court and Intermediate Court of Appeals from a Judgment, Order or Decree of a Circuit/District/Family/Land/Tax Court.

(TITLE OF COURT)
STATE OF HAWAII

A. B., Plaintiff,)	(LOWER CASE NO.)
v.)	
C.D., Defendant.)	NOTICE OF APPEAL
)	
)	

NOTICE OF APPEAL

Notice is hereby given that (appealing party), by and through his attorney, (name of attorney), pursuant to section (cite relevant section of chapter 641 or other relevant statute), Hawaii Revised Statutes, and Rule 3 of the Hawaii Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Supreme Court and Intermediate Court of Appeals of the State of Hawaii from the (specify whether final or interlocutory and describe judgment/order/decreedecision), filed herein on _____, and (attached hereto as Exhibit "A").

DATED: Honolulu, Hawaii, _____.

Attorney for Appellant

NOTE: *If appeal is interlocutory, specify statute, rule, or case authorizing it.*

Form 2. Notice of Appeal to the Supreme Court and Intermediate Court of Appeals from a Decision and Order of an Agency, Board, Commission or Officer.

(TITLE OF AGENCY, ETC.)
OF THE STATE OF HAWAII

A.B., Plaintiff,)	DOCKET NO. _____
)	
v.)	NOTICE OF APPEAL
)	
C.D., Defendant)	
_____)	

NOTICE OF APPEAL

Notice is hereby given that (appealing party), by and through his attorney, (name of attorney), pursuant to (cite 91-14 or other relevant section) of the Hawai'i Revised Statutes and Rule 3 of the Hawai'i Rules of Appellate Procedure (and any other relevant rules and cases), appeals to the Supreme Court and Intermediate Court of Appeals of the State of Hawai'i from the decision and order of the (agency) (specify whether final or interlocutory and describe order), filed herein on _____, and (attached hereto as Exhibit "A").

DATED: Honolulu, Hawai'i, _____.

Attorney for Appellant

NOTE: *If appeal is interlocutory, specify statute, rule, or case authorizing it.*

Form 3. Notice of Appeal to the Circuit Court from a Decision and Order of an Agency, Board, Commission or Officer.IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

A.B., Plaintiff,)	DOCKET NO. _____
)	
v.)	
)	NOTICE OF APPEAL
C.D., Defendant.)	
_____)	

NOTICE OF APPEAL

Notice is hereby given that (appealing party), by and through his attorney, (name of attorney), pursuant to (cite 91-14 or other relevant section), Hawai'i Revised Statutes, and Rule 72 of the Hawai'i Rules of Civil Procedure (and any other relevant rules and cases), appeals to the Circuit Court of the First Circuit from the decision and order of the (agency) (specify whether final or interlocutory and describe order), filed herein on _____, and (attached hereto as Exhibit "A").

DATED: Honolulu, Hawai'i, _____.

Attorney for Petitioner

Form 4. Affidavit to Accompany Motion for Leave to Appeal in Forma Pauperis for Filing in the Respective Lower Court/Agency.(LOWER COURT/AGENCY)
STATE OF HAWAII

A.B., Plaintiff,)	CASE NO. _____
)	
v.)	
)	
C.D., Defendant.)	
_____)	
)	

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE
TO PROCEED ON APPEAL IN FORMA PAUPERIS

STATE OF Hawaii)	
)	
)	SS.
)	
COUNTY OF _____)	
_____)	

I, _____ being first duly sworn, depose and say that I am the _____ in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor; I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

(list issues)

I further state that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. ARE YOU PRESENTLY EMPLOYED?

- a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

- b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. HAVE YOU RECEIVED WITHIN THE PAST TWELVE MONTHS ANY INCOME FROM A BUSINESS, PROFESSION OR OTHER FORM OF SELF-EMPLOYMENT, OR IN THE FORM OF RENT PAYMENTS, INTEREST, DIVIDENDS, OR OTHER SOURCE?
- a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. DO YOU OWN ANY CASH OR CHECKING OR SAVINGS ACCOUNT?
- a. If the answer is yes, state the total value of the items owned.
4. DO YOU OWN ANY REAL ESTATE, STOCKS, BONDS, NOTES, AUTOMOBILES, OR OTHER VALUABLE PROPERTY (EXCLUDING ORDINARY HOUSEHOLD FURNISHINGS AND CLOTHING)?
- a. If the answer is yes, describe the property and state its approximate value.
5. LIST THE PERSONS WHO ARE DEPENDENT UPON YOU FOR SUPPORT AND STATE YOUR RELATIONSHIP TO THOSE PERSONS.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Subscribed and sworn to before me
this ____ day of _____, 20____.

Notary Public, State of Hawai'i

My commission expires:

- ☐ Application granted.
- ☐ Application denied for the following reason:
- ☐ Appeal is not taken in good faith.
- ☐ Applicant does not meet financial qualifications.

Judge of the above-entitled court

Form 5. Notice and Judgment on Appeal.

NO. _____

IN THE (SUPREME COURT or INTERMEDIATE COURT OF APPEALS)
OF THE STATE OF HAWAII

(Name), Plaintiff-(Appellant) (Appellee),)	<u>(CIVIL, CRIMINAL, ETC.) NO.</u>
v.)	
(Name), Defendant-(Appellant) (Appellee).)	APPEAL FROM (title of order or judgment)
)	FILED (date)
)	COURT OR AGENCY APPEALED FROM
)	HONORABLE (name of judge), JUDGE
)	

NOTICE and JUDGMENT ON APPEAL

TO: THE HONORABLE _____ (presiding judge/director/etc.) OF THE

(name of court or agency):PLEASE TAKE NOTICE the following Judgment on Appeal is entered this day by the

(Supreme Court or Intermediate Court of Appeals) of the State of Hawaii:Pursuant to the opinion of the _____ (Supreme Court or Intermediate Court of Appeals)
entered on _____ (date), the _____ (judgment) (order) (decision) of the

(name of court or agency) entered on _____ (date) is _____ (affirmed) (reversed) (vacated)
(remanded) (etc.) _____.

DATED: Honolulu, Hawaii, _____ (date) _____.

BY THE COURT:

Clerk

APPROVED:

(Justice/Judge)

Form 6

IN THE _____
(Court or Agency From Which Appeal is Taken)

CIVIL APPEAL DOCKETING STATEMENT
(For Use By The Appellate Conference Program)

INTERNAL USE ONLY

PLEASE TYPE OR PRINT, ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE		Lower Court/Agency Docket Number:		
		Is this a Cross-Appeal? ____ Yes ____ No		
		Has this matter previously been before the Hawai'i Appellate Courts? ____ Yes ____ No If yes, state when: Case Name: SC Docket Number:		
CHECK AS MANY AS APPLICABLE				
JURISDICTION		LOWER COURT/AGENCY DISPOSITION		
1. LOWER COURT/AGENCY	2. APPELLATE	1. STAGE OF PROCEEDINGS	2. TYPE OF JUDGMENT / ORDER APPEALED	3. RELIEF
<input type="checkbox"/> Statutory <input type="checkbox"/> Other Grounds (specify)	<input type="checkbox"/> Final Decision of Lower Court / Agency <input type="checkbox"/> Interlocutory Decision <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Pre-Trial <input type="checkbox"/> During Trial <input type="checkbox"/> After Trial	<input type="checkbox"/> Default Judgment <input type="checkbox"/> Judgment/Court Decision <input type="checkbox"/> Dismissal/Jurisdiction <input type="checkbox"/> Judgment/Jury Verdict <input type="checkbox"/> Dismissal/Merits <input type="checkbox"/> Summary Judgment <input type="checkbox"/> Judgment NOV <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Directed Verdict <input type="checkbox"/> Other (Specify)	<input type="checkbox"/> Damages: Amount Sought: \$ _____ Amount Granted: \$ _____ <input type="checkbox"/> Injunctions <input type="checkbox"/> Preliminary <input type="checkbox"/> Permanent <input type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/> Other (Specify)

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:

ANTICIPATED ISSUES PROPOSED TO BE RAISED ON APPEAL:

MAY THE MEDIATOR CONTACT THE TRIAL JUDGE TO DISCUSS THE CASE?

_____ Yes _____ No

BASED ON YOUR PRESENT KNOWLEDGE:

1. Does this appeal involve a question of first impression or present a novel legal question?
 _____ Yes _____ No
2. Does this appeal involve a question of state or federal constitutional interpretation?
 _____ Yes _____ No
3. Does this case raise a question of law regarding the validity of a state statute, county ordinance, or agency regulation?
 _____ Yes _____ No
4. Does this case involve issues upon which there is an inconsistency in the decisions of the Intermediate Court of Appeals or the Supreme Court?
 _____ Yes _____ No
5. Will the determination of this appeal turn on the interpretation or application of particular case or statute?

_____ Yes _____ No If Yes, provide:
 Case name/statute:
 Citation:
 Docket Number, if unreported:

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

- _____ Likelihood of a motion to expedite the appeal.
 _____ Multiple parties on either side for whom joint briefing is possible.
 _____ Likelihood of motions to intervene on appeal.
 _____ Likelihood of motions to file *amicus* briefs.
 _____ Likelihood of motions to stay appeal pending resolution of a related case. Identify case name, docket number, and court or agency:
 _____ Other procedural complexities. If so, please identify them:

COUNSEL FOR APPELLANTS: NAME: ADDRESS: TELEPHONE ()	TRIAL COUNSEL FOR APPELLANT(S) (If different from appeal counsel) NAME: ADDRESS: TELEPHONE ()
---	--

I CERTIFY THAT A COPY OF THIS CIVIL APPEAL DOCKETING STATEMENT WAS SUBMITTED TO THE CLERK OF THE LOWER COURT/AGENCY AND THAT IT WAS SERVED ON EACH PARTY/COUNSEL SHOWN ON THE ATTACHED SERVICE LIST.

Signature

Date

REMEMBER TO ATTACH COPIES OF (1) THE ORDER/JUDGMENT APPEALED FROM, (2) ANY WRITTEN OPINION OR FINDINGS OF FACT AND CONCLUSIONS OF LAW SUPPORTING THE ORDER/JUDGMENT, AND (3) PROOF OF SERVICE ON ALL OTHER PARTIES TO THE PROCEEDINGS BELOW (WITH TELEPHONE NUMBERS)

Form 7

NO. _____

IN THE (SUPREME COURT or INTERMEDIATE COURT OF APPEALS)
OF THE STATE OF HAWAII

IN RE ATTORNEYS' FEES FOR)	CR. NO. _____
)	
_____.)	
)	
Appellant.)	
_____)	

REQUEST AND DECLARATION OF COUNSEL

I, _____, Appellant's attorney, request compensation for necessary expenses and attorneys' fees pursuant to HRS § _____ and, in conjunction herewith aver, as follows:

1. I was appointed to represent Defendant-Appellant _____ by order of the _____ court of the _____ circuit, on _____.

2. I request reimbursement for necessary expenses as follows:

<u>Expense</u>	<u>Amount</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

A true and correct itemized accounting of these necessary expenses, including relevant invoices and receipts, is attached as Appendix A.

3. I have expended the following hours in attorney work for this appeal and request amounts as follows:

	<u>Activity</u>	<u>Hours</u>		<u>Amount</u>
a.	Correspondence, Interviews and Conferences	_____	@ \$40	\$_____
b.	Obtaining & Reviewing Records	_____	@ \$40	\$_____
c.	Legal Research	_____	@ \$40	\$_____
d.	Drafting	_____	@ \$40	\$_____
e.	Oral Argument (In-court)	_____	@ \$60	\$_____
f.	Other <u>(Specify)</u> _____	_____	@ \$40	\$_____
		TOTALS	_____	\$_____

Attached hereto as Appendix B are hourly worksheets, prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of the Appellant.

I, _____, declare under penalty of law, as provided by HRAP 52, that the foregoing is true and correct.

DATED: _____

Form 7a. BLANK HOURLY WORKSHEET (Indigent Representation)

[illegible]

Sub-Total for this page

GRAND TOTAL

Form 7b. COMPLETED HOURLY WORKSHEET (Indigent Representation)

		Correspondence Interviews & Conferences	Obtaining & Reviewing Records	Legal Research		Oral Argument (In-court)	Other (Specify)
					.25		
		.5					
		.3					
					.5		
			2.0				
			8.0				
					2.1		
					2.3		
					.5		
				2.0			
					4.0		
					4.0		
							1.5
					1.5		
12345		.2					
							1.5
							1.5

State v. Doe

Form 8

NO. _____

IN THE (SUPREME COURT or INTERMEDIATE COURT OF APPEALS)
OF THE STATE OF HAWAII

_____ ,)	_____ NO. _____
Plaintiff-_____ ,)	
v. _____ ,)	
Defendant-_____ .)	
_____)	

REQUEST AND DECLARATION OF COUNSEL

I, _____, attorney for _____, request compensation for cost pursuant to HRAP 39 [and HRS § _____ or _____] and attorneys' fees pursuant to [HRS § _____ or _____] and, in conjunction herewith aver, as follows:

1. (Appellant or Appellee) _____ (name) _____ prevailed in this appeal.

2. I request reimbursement for costs as follows:

<u>Item</u>	<u>Amount</u>
a. Transcripts	\$ _____
b. Bond	\$ _____
c. Filings fees	\$ _____
d. Printing/copying of briefs/appendices	\$ _____
(# _____ pages @ \$._____/page)	

A true and correct itemized accounting of these costs, including relevant invoices and receipts, is attached as Appendix A.

3. I have expended the following hours in attorney work and charge the following amounts for this appeal:

<u>Activity</u>	<u>Hours</u>	<u>Amount</u>
a. Correspondence, Interviews and Conferences	_____ @ \$ _____	\$ _____
b. Obtaining & Reviewing Records	_____ @ \$ _____	\$ _____
c. Legal Research	_____ @ \$ _____	\$ _____
d. Drafting	_____ @ \$ _____	\$ _____
e. Oral Argument (In-court)	_____ @ \$ _____	\$ _____
f. Other <u>(Specify)</u> _____	_____ @ \$ _____	\$ _____
TOTALS	_____	\$ _____

Attached hereto as Appendix B are hourly worksheets, prepared contemporaneously with the work performed as noted thereon and truthfully reflecting the amount of work actually performed in the representation of (Appellant or Appellee) _____.

4. I request reimbursement in the amount of \$ _____, the amount allowed by HRAP 39 [and HRS § _____ or _____], as fully explained, with citation to authority, in the memorandum appended hereto.

I, _____, declare under penalty of law, as provided by HRAP 52, that the foregoing is true and correct.

DATED: _____

Form 8a. BLANK HOURLY WORKSHEET (Non-Indigent Representation)

[illegible]

Sub-Total for this page

GRAND TOTAL

Form 8b. COMPLETED HOURLY WORKSHEET (Non-Indigent Representation)

		Correspondence Interviews & Conferences	Obtaining & Reviewing Records	Legal Research		Oral Argument (In-court)	Other (Specify)
					.25		
		.5					
		.3					
					.5		
			2.0				
			8.0				
					2.1		
					2.3		
					.5		
				2.0			
					4.0		
					4.0		
							1.5
					1.5		
		.2					
12345							
							1.5
							1.5

State v. Doe

Appendix A

The following is a list of the number of copies required in addition to the original document submitted to the Hawai'i appellate courts for filing. The number does not include those copies the parties need for service or themselves. Additional copies may be requested.

	<u>Supreme Court</u>	<u>ICA</u>
Affidavit/Declaration of Counsel (when filed separately)	6	4
Amicus Curiae Briefs	6	4
Application for Writ of Certiorari	8	--
Briefs on Reserved Questions	6	--
Citation of Supplemental Authorities	7	5
Motion to Appear Pro Hac Vice	1	--
Motion to Dismiss	6	4
Motion to Extend Time to Docket the Record on Appeal	1	--
Motion to Extend Time to File Briefs	1	--
Motion to Proceed In Forma Pauperis	1	--
Motion to Remand	6	4
Motion to Supplement the Record on Appeal	1	1
Motion for Leave to File Amicus Curiae Brief	1	--
Motion for Reconsideration	6	4
Motion for Retention of Oral Argument	6	4
Notice and Judgment on Appeal	1	1
Opening/Answering/Reply Briefs	2	2
Petition for Writ of Habeas Corpus	6	--
Petition for Writ of Mandamus	6	--
Request for Attorneys' Fees and Expenses	8	7
Statement of Jurisdiction	6	--
Stipulation to Dismiss Appeal	7	6
Stipulation to Vacate and Remand	8	7
Supplemental Briefs	6	4
Verified Bill of Costs	6	4
Other Documents	6	4